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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1943

No. 605

EVELYN FLYNN,
Petitioner,

vs.

CHESTER BOWLES, Price Administrator,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Emergency Court of Appeals
and
BRIEF IN SUPPORT THEREOF.

EVELYN FLYNN,
530 Larkin Street, San Francisco,
Petitioner in Propria Persona.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO, CALIFORNIA

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1943

No.

EVELYN FLYNN,
Petitioner,
vs.
CHESTER BOWLES, Price Administrator,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Emergency Court of Appeals.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Your petitioner, Evelyn Flynn, prays that a writ of certiorari issue to review the judgment of the United States Emergency Court of Appeals in the cause entitled Flynn v. Bowles, No. 87, which became final on December 15, 1943, on the denial by said Court of petitioner's motion for rehearing therein.

In support thereof the petitioner respectfully represents to this Honorable Court as follows:

SUMMARY AND STATEMENT OF THE MATTER INVOLVED.

Heretofore, to-wit, on September 27, 1943, a complaint was duly filed by petitioner in the United States Emergency Court of Appeals, complaining against the Administrator of the Office of Price Administration because of the denial of her protest duly filed with said Administrator on September 13, 1943, and denied by him on September 14, 1943. Said complaint was duly docketed as cause No. 87 in said Court and came on for hearing on respondent's motion to dismiss filed October 11, 1943. It then appearing that subsequently to the denial of said protest by the San Francisco office of respondent, as charged in the complaint, and subsequently to the filing of said complaint, respondent had also caused an order to be issued by his Washington, D.C. office dismissing said protest, the motion to dismiss the complaint filed October 11, 1943, was denied by the Court and on motion of petitioner the complaint was amended by adding to paragraph II thereof the following, to-wit:

> "The protest was also dismissed by an order of the Administrator of the Office of Price Administration dated October 9, 1943."

The order of the Court was issued without prejudice to the right of respondent to move for dismissal of the amended complaint. Such motion was thereafter

filed by respondent on November 18, 1943, and after hearing thereon, judgment was entered by said Court on December 2, 1943, dismissing said complaint, and on motion duly made for a rehearing or modification of said judgment the Court denied said motion by its final order dated December 15, 1943.

There is included herewith and certified to be correct by the clerk of the United States Emergency Court of Appeals, a transcript of record of said cause in said Court, and copies of the complaint as amended.

SUBJECT MATTER OF COMPLAINT AND PROTEST.

The complaint and the protest precedent thereto each raised the following questions or issues.

(1) The validity of Maximum Rent Regulation No. 28, as applied to petitioner and her rights and property, with particular regard to the manner in which respondent under authority thereof had withheld her property from petitioner since November 9, 1943.

(2) The validity of the rent control and procedural provisions of the Emergency Price Control Act of 1942, as applied to petitioner's rights and property with particular regard to the manner in which her property was confiscated by respondent thereby after November 9, 1943.

(3) The validity of procedural regulations issued by respondent pursuant to the Act and particularly

Procedural Regulation No. 3, with regard to its effect upon petitioner and the manner in which the confiscation of petitioner's property was facilitated thereby.

The complaint charges in part, and the protest alleged, that under authority of the above cited Act and regulations her property had been taken and withheld from her without just compensation and without due process in violation of the Fifth Amendment to the Constitution of the United States, and that each of the provisions and regulations are invalid and unconstitutional and Maximum Rent Regulation No. 28 is contrary to law, arbitrary, capricious, discriminatory and generally unfair and inequitable on grounds shown more fully in proceedings between respondent and petitioner prior to the filing of the protest and incorporated therein by reference, all of said grounds having arisen after the expiration of sixty days from the date of issuance of Maximum Rent Regulation No. 28.

The complaint further charges and the protest precedent thereto also charged that respondent had abused the powers granted by the Act; that he had restrained petitioner from collecting a proper or agreed rental for the use of her property and had refused upon her application to inform her as to what rents she could charge; that as a result she was prevented from collecting just, or in many instances any, compensation for the use of her property of a value of $15,000.00 in the possession of tenants; that said property consisting of furnishings

was being worn out and depleted without compensation to her; that by injunctive process and his failure and refusal to grant permission upon her application respondent is unlawfully preventing her from recovering possession of her property; that it is the desire and purpose of respondent to destroy the rights and property of petitioner for the reasons therein stated; that such destruction may be effected by delaying petitioner in her efforts to obtain judicial review of respondent's acts and conduct by a Court of competent jurisdiction and authority; that he has deliberately delayed her for many months as stated therein and seeks to further delay her; that all the foregoing and other allegations made are supported by the records of the various proceedings between respondent and petitioner and incorporated in protest and complaint by reference.

In conformity with the requirement of Section 1300.219 (f) of Revised Procedural Regulation No. 3 of the Office of Price Administration, the Protest specified the facts commencing with the filing of an action against her by respondent on November 9, 1942, which constituted the grounds upon which her protest against Maximum Rent Regulation No. 28 and the various provisions of the Act and procedural regulations were based. All of said facts and grounds being shown by the dates given to have arisen after the expiration of sixty days from the dates of issuance of Maximum Rent Regulation No. 28, and Procedural Regulation No. 3. The protest further contained on the first page thereof a statement that it

was against Maximum Rent Regulation No. 28, and against the procedural regulations issued pursuant to the Act, and specified the date of issuance of Maximum Rent Regulation No. 28, as being June 30, 1942, and further specified the date of issuance of Procedural Regulation No. 3 with sufficient exactness as there shown, all in conformity with Section 1300.217 (b) and (c) of Revised Procedural Regulation No. 3, which provides for the "Form of Protest" where the "Protest" is against a maximum rent regulation.

STATEMENT OF JURISDICTION.

The jurisdiction of this cause is specifically vested in this Honorable Court by the provisions of the Emergency Price Control Act of 1942. Section 204(d) of said Act provides in part as follows:

> "Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, * * * The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, * * *" (of the Act).

(Section 2 of the Act referred to in the above quotation is the section authorizing rent and price control and covers the regulations and matters herein at issue.)

The petitioner has duly followed the procedure set forth in Sections 203 and 204 of the Act and the subject matter of her protest and cause in the Emergency Court of Appeals is that specified in the appropriate provisions of the Act as herein set forth.

QUESTIONS PRESENTED.

The questions presented are as follows:

1. Does the complaint as amended state a claim upon which relief can be granted?

2. Does the United States Emergency Court of Appeals and the Supreme Court of the United States upon review of judgments and orders thereof have jurisdiction to grant any relief under the complaint as amended upon a proper proof by the complainant of the allegations therein contained?

3. May the Administrator of the Office of Price Administration lawfully avoid a review by the United States Emergency Court of Appeals of his alleged unlawful regulations, orders and acts by dismissing petitioner's protest against such regulations and other matters and directing that said protest is to be considered by his subordinates as an "Application for Review" of an order issued by him subsequently to the filing of said protest.

4. May the Administrator lawfully deprive petitioner of the right of review provided for in Sections 203 and 204 of the Act by refusing to consider

her protest on its merits and dismissing it rather than denying it?

5. Did the Emergency Court of Appeals err in—

(a) Dismissing the Complaint?

(b) Refusing to inform petitioner of the grounds upon which said complaint was dismissed?

(c) Refusing to inform petitioner how to properly bring the matters set forth in her complaint before the Court?

(d) Refusing to remand the proceedings with instructions as prayed in her petition for rehearing or modification of judgment?

(e) Refusing to grant petitioner declaratory relief as prayed in her complaint and petition for rehearing?

In the event this Honorable Court should determine that the dismissal of her complaint was valid under the provisions of the Emergency Price Control Act of 1942, petitioner respectfully prays a ruling on the following question raised thereby.

6. Are the exclusive jurisdiction provisions of Section 204(d) of the Emergency Price Control Act of 1942 valid under the due process clause of the Fifth Amendment to the Constitution of the United States as they are applied to this petitioner, having regard to the fact that petitioner's property has been withheld from her for fourteen months against her

will and without just compensation through the agency of a Court which has been deprived by said exclusive jurisdiction provisions of the right to "consider the validity of any * * * regulation, order or price schedule" under authority of which the power of said Court was invoked and exercised against petitioner?

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

Your petitioner respectfully informs this Honorable Court that the issues raised in this case are of the utmost importance to her and her health, liberty and property. They are also of wide general interest to all persons subject to regulations of the Office of Price Administration, whose right of appeal and review may be delayed or abridged as the petitioner's has been in the case at bar.

The issues raised in the complaint are of substantial and vital importance and widespread interest; have been the subject of various conflicting Court decisions and have never been passed upon by this Honorable Court which has been given final jurisdiction thereof.

Under the provisions of the Emergency Price Control Act of 1942 the United States Emergency Court of Appeals created by that Act is the first Court to which any person aggrieved by the regulations or orders of the Administrator, respondent herein, may apply for relief. All other Courts except the Su-

preme Court upon review of decisions of the Emergency Court of Appeals have been prohibited by Section 204(d) of said Act from even "considering the validity" of any such regulation or order, notwithstanding that such other Courts are required by Section 205(a) of said Act to enforce such orders and regulations.

As hereinbefore stated under the heading of "Subject Matter of Complaint and Protest" respondent has confiscated and withheld petitioner's property from her for fourteen months, during which time he has enjoined her from collecting just compensation therefor and from recovering possession thereof, and during which time said property is being worn out and depleted and her equity therein is being destroyed. Respondent has enjoined the collection of proper or agreed rentals for the use of this property and has refused to instruct petitioner as to what rental she may collect.

The effect of the dismissal of petitioner's complaint is that her property is still withheld from her in violation of the due process and just compensation clauses of the Fifth Amendment to the Constitution.

As stated in petitioner's petition for rehearing or modification of judgment, this petitioner was forced to sell a portion of her property because of the situation in which she was placed by respondent as charged in the complaint. Respondent now seeks to utterly destroy this petitioner's rights and equity by compelling her to refund to the purchasers of her

property the sums they have paid on the purchase price thereof, requiring petitioner to permit the purchasers to retain possession of said property without payment therefor, and knowing full well that this petitioner has not the financial means of instituting and carrying on the lengthy process of petition, application for review, protest, and appeals necessary to obtain relief under the procedure which he seeks to impose upon her. This procedure tested by the time respondent has taken to act upon the various proceedings incorporated in the protest filed by petitioner precedent to her complaint herein, would consume not less than twenty-two months exclusive of any appeal to this Honorable Court, and the cost would be prohibitive to this petitioner. In each of the proceedings on which petitioner is testing this time the petitioner and other parties involved were promised expeditious treatment, but petitioner again charges as charged in her complaint and protest that these procedures were deliberately delayed by respondent in order that he might avoid a review of his unlawful acts. The Federal District Court by the agency of which respondent is enforcing his regulations and orders against petitioner has refused to consider the validity of such regulations and orders, considering itself prohibited from doing so by Section 204(d) of the Act.

Petitioner realizes that in ordinary Court procedure under the circumstances of this case the questions properly before this Honorable Court would be solely those questions relating to the dismissal of her

complaint by the lower Court, but Petitioner respectfully submits that this is not an ordinary case. In this case petitioner's property has been withheld from her for fourteen months and she is being threatened with imprisonment and fines if she will not give up the equities that remain. The Court to which petitioner is required to apply in the first instance for relief from this situation is a Court created by the very statute and sections thereof which are challenged in the complaint. A decision favorable to this petitioner in every respect as prayed in her complaint would result in the abolishment of said Court and would return to every Court the right and duty to enforce the "bill of rights" and the safeguards provided in the Constitution of the United States.

Petitioner respectfully submits that the due process guaranteed by the Fifth Amendment to the Constitution, as well as the right of review granted in Section 204 of the Act, require a review by this Honorable Court of the facts of this case. Without such review this petitioner will suffer irreparable injury and her constitutional rights will have been trampled upon with impunity. The injury resulting if a writ is denied will extend far beyond its effect upon this petitioner. By such denial respondent will be encouraged and sustained in practices which will shock the conscience of the Court when fully disclosed.

Wherefore, your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Court, directed to the United States

Emergency Court of Appeals to the end that the judgment of the United States Emergency Court of Appeals may be reviewed and remanded by this Honorable Court with such instructions as may be proper.

Dated, San Francisco, California,
January 8, 1944.

EVELYN FLYNN,
Petitioner in Propria Persona.

State of California,
City and County of San Francisco.—ss.

Evelyn Flynn, being first duly sworn, deposes and says:

That she is the petitioner in the foregoing petition for writ of certiorari and that she has read the petition and knows the contents thereof and that the same is true of her own knowledge except as to those matters therein stated on information and belief, and as to those matters she believes it to be true.

EVELYN FLYNN.

Subscribed and sworn to before me this 8th day of January, 1944.

(Seal) ELLA COOK KELLY,
Notary Public in and for the City and County of San Francisco, State of California.

My commission expires December 23, 1944.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1943

No.

EVELYN FLYNN,
Petitioner,

vs.

CHESTER BOWLES, Price Administrator,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

No opinion was given by the United States Emergency Court of Appeals in this case. The final judgment is included in the transcript of record of the case on the last page thereof.

I.

STATEMENT OF GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

The judgment of the United States Emergency Court of Appeals was dated December 2, 1943. The

final order of said Court denying rehearing in said cause was dated December 15, 1943.

The petition for a writ of certiorari is filed in the Supreme Court of the United States in this cause pursuant to the procedure specifically provided in Sections 203, 204 and 204(d) of the Emergency Price Control Act of 1942. (Act Jan. 30, 1942, c. 26, 56 Stat. 23.) The subject matter of her complaint and protest is that contemplated by said sections of the Act. It is therefore a justiciable cause properly before the Supreme Court of the United States for judicial review.

II.

STATEMENT OF THE CASE.

The statement of the case hereinbefore set forth in the petition for writ of certiorari (p. 2), including the statements of facts included under "Reasons Relied on for Allowance of Writ" (p. 9), is hereby referred to and adopted as the statement of the case herein as if the same were here fully set forth. Reference is also made to the transcript of record in the Emergency Court of Appeals.

Important constitutional questions are involved in this case and should be passed upon by this Honorable Court.

III.

ERRORS OF COURT BELOW.

The United States Emergency Court of Appeals erred in dismissing the complaint; in refusing to inform petitioner of the grounds upon which it was dismissed; in failing to require the administrator, respondent herein, to answer and file a record as provided by Section 204(a) of the Act; in failing to thereafter consider petitioner's cause on its merits; in failing to grant petitioner any relief, declaratory or otherwise.

IV.

DUE PROCESS CLAUSE OF FIFTH AMENDMENT VIOLATED.

Exercise by the Congress of particular "war powers" does not permit it to disregard the Fifth Amendment. In exercising such "war powers" the Congress must respect the Fifth Amendment with the same scrupulous regard as in times of peace.

Home Building & Loan Ass'n v. Blaisdell, 290 U. S. 398;

Schecter v. U. S., 295 U. S. 495.

The Courts likewise in construing and adjudicating disputes under these war acts should apply and respect the Fifth Amendment.

> "The Constitution of the United States is a law for rulers and people equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all cir-

> cumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government."
>
> *Ex parte Milligan*, 4 Wall. 2, 18 L. Ed. 281.

In the case at bar petitioner's constitutional rights had already been invaded, her property had been taken and withheld from her without compensation for more than ten months before she filed her complaint in the Emergency Court of Appeals. For all this period she had endeavored to obtain relief from respondent and from the Court through the agency of which her property had been taken. When it became apparent that respondent would not release her property or inform her of what rent she could charge for the use of same, and that the Federal District Court would not consider the validity of these actions of respondent, petitioner applied to the Emergency Court of Appeals for relief and adjudication of her rights by the methods provided in the Act.

By dismissing her complaint the Court is facilitating and effecting the continued confiscation and appropriation of petitioner's property by respondent in violation of the due process clause of the Fifth Amendment.

Here petitioner is denied a hearing by a Court of competent jurisdiction even after her property has been taken and she has been denied all administrative relief.

Cases holding that "due process" under the Fifth Amendment require notice and hearing *before,* not *after,* contractual or property rights of the parties are affected to the detriment of either of the contracting parties are as follows:

Ochoa v. Morales, 230 U. S. 139;
Teigle v. Acme Homestead Ass'n, 297 U. S. 189;
Nord v. Griffin (7th Cir.), 86 Fed. (2d) 481 (certiorari denied, 300 U. S. 673);
Boeing Air Transport Inc. v. Farley, 75 Fed. (2d) 765;
Norwood v. Baker, 172 U. S. 269;
Road Improvement Dist. v. St. Louis etc. R. Co., 28 Fed. (2d) 825.

Most of the above causes involved a legislative taking of private property for a public use, and held it to be without due process of law. However, how much more violative of the Fifth Amendment is it to take such property by Court action without notice or hearing before the taking, without compensation granted or offered, and *then* to deny any or all hearing or adjudication by a Court of competent jurisdiction to consider the validity of such taking!

It is very apparent from the representations of respondent to the Emergency Court of Appeals that he seeks to preclude petitioner from any such hearing or adjudication and seeks to compel her to apply to said Court on the very narrow issue as to whether he erred *under the regulation* in denying petition 8—S.F. 30482. He seeks to avoid an adjudication of the regu-

lation itself under which her property has been taken without compensation, notwithstanding that the right to such adjudication is conferred by Sections 203 and 204 of the Act, the procedure of which petitioner has faithfully conformed with.

For a review of this narrow issue on which relief to this petitioner is highly improbable in view of the wide discretion conferred by said regulation upon respondent who devised and promulgated it, respondent insists that petitioner must file a new protest so that he may again review the matter (and delay petitioner) before she may have access to the Court.

As soon as he succeeded in obtaining a dismissal of her complaint, instead of attempting to alleviate her distress or adjudicate the matters in dispute, he sought instead to have her imprisoned and fined $500.00 and to have further property confiscated and withheld from her which petitioner was not renting but had in fact been forced to sell under the distress created by respondent's actions. The Emergency Court of Appeals was informed of these matters in the petition for rehearing or modification of judgment and by telegram dated December 14, 1943 which read as follows:

> "San Francisco Calif Dec 14 1943
> Herman C Beasley, Clerk
> US Emergency Court of Appeals Wash DC
> Re Flynn V Bowles No. 87 please inform court that respondent filed motion in Federal District court yesterday to have complainant fined $500. and imprisoned on issues raised in her protest

and complaint No. 87 concerning which Respondent is wrongfully seeking to avoid a review by his motion to dismiss. Request judgment be set aside and respondent be required to answer complaint or that 10 days be allowed Complainant to file supplement or new petition for rehearing. Court should be fully advised before dismissal this complaint becomes final please wire ruling collect

Evelyn Flynn"

The Court thereupon under date of December 15, 1943 entered its final order denying petitioner's request for relief or modification.

DISMISSAL NOT SUPPORTED BY THE RECORD.

The dismissal of petitioner's complaint is not supported by the record as will be seen by an examination of the contentions advanced by respondent and the objections and answers filed by petitioner and comprising the record of this case before the Emergency Court of Appeals.

To avoid repetition these documents are hereby incorporated herein and made a part hereof as fully as though the same were herein fully set forth.

It will be noted that respondent contended and petitioner denied that her protest was or should be directed against an order denying Petition 30482. Respondent attempted to forward this idea by omitting in the exhibits filed with the Court the date of acknowledgment of service appearing at the close of

said protest. This omission was called to the attention of the Court by letter and the endorsement as appearing on each of the six copies of the protest mailed to Washington read:

> 6 copies of the foregoing Protest was served upon me this 13th day of September, A.D. 1943.
>
> Office of Price Administration
> San Francisco Defense-Rental Area
> By Luther M. Carr
> title Chief Attorney

When petitioner filed her protest (an original and five copies in San Francisco and another original and five copies in Washington, D. C.) she had no knowledge that her petition would be denied on the next day.

Such denial issued the day after the protest was filed was apparently intended by respondent to forestall and defeat petitioner's protest and was in fact a partial if not complete denial of said protest, in view of the fact that she specifically requested in said protest that it be considered *concurrently with said petition* and that a denial of said petition be considered as a denial of her protest so that she might thereupon and without further delay institute action in the United States Emergency Court of Appeals as provided by the Act.

It is obvious from the subject matter of the protest that it embraced far wider issues than contained in Petition 30482 and that it complied with the requirements of Section 203 of the Emergency Price Control Act of 1942 and the requirements of Revised Pro-

cedural Regulation No. 3 as a protest against the validity of Maximum Rent Regulation No. 28 on grounds arising after sixty days from the date of issuance thereof, such grounds being enumerated in paragraph V of said protest as required by Procedural Regulation No. 3.

The reason for requesting that it be considered concurrently with Petition 30482 was stated therein. The fact that the protest incorporated into itself by reference the evidence, testimony and records already before the administrator in the proceedings on Petition 30482 of more than five months duration at that time, could not thereby limit said protest to the issues raised in the original petition. The record of proceedings in that petition will disclose that respondent used the petition not as a means of deciding the issues raised in said original petition but chiefly as a means of obtaining information from petitioner by which he could further harrass and defraud her, maintain contempt charges against her, and further confiscate her property.

By reason of these facts the transcript of record in this petition, incorporated into protest and complaint, contained the evidence commencing with the first action of respondent against petitioner on November 9, 1942 which petitioner required to substantiate her protest and complaint.

An examination of the complaint herein will disclose the nature of the charges therein made and the motives and intent of respondent.

Petitioner respectfully informs this Honorable Court that respondent and the United States Emergency Court of Appeals has gone to great lengths to prevent certain of this evidence from reaching this Honorable Court. This petitioner believes that the cumulative effect and purpose evidenced thereby amounts to malfeasance of office and that petitioner should not be deprived of her property or a hearing on the merits in order that individuals guilty of such misconduct may be protected.

This evidence in substantial part was first offered to the Emergency Court of Appeals in cause No. 10 (which cause was incorporated in the record of Petition 30482, and in protest and complaint herein) on April 12, 1943 and was rejected by said Court on April 15, 1943. In the opinion denying said cause the Court stated:

> "We are thus called upon to consider the constitutional validity of the Act and regulation generally and without regard to their particular application to the complainant."

notwithstanding the fact as shown by the record that the Court had rejected the evidence of particular application to the complainant by orders dated December 29, 1942 and April 15, 1943.

The evidence in substantial part was next offered to the Court in Cause No. 81 which is an appeal from the denial of Protest 15, Region VIII, the record of which is incorporated in the record of Petition 30482 and in protest and complaint herein. In this case

(cause 81) filed August 30, 1943 this petitioner is informed that the Court has refused to require respondent to file a complete and proper record including this evidence notwithstanding that such record was stipulated to between the respondent and the complainant in said cause at the time of said protest proceedings. This petitioner is further informed that as to the part of the record which the Court has required respondent to file in said case; the records have been altered and parts thereof were omitted; that substantial parts of the record still remain to be filed although four and a half months have elapsed since the filing of the case and the rules of the Court provide that such record shall be filed as soon as practicable and in no event later than twenty days after service of the complaint; that the complainant has made exhaustive efforts to remedy these conditions with no avail or results except that respondent has attacked him more viciously in San Francisco and sought to have him fined and imprisoned; and that an attorney, David C. Dunlap, representing respondent in San Francisco threatened the complainant therein that unless he would consent to the elimination of evidence which said complainant deemed essential to this cause that respondent would further delay the proceedings by again filing only such parts as they deemed appropriate and thus again compel said complainant to apply to the Court.

This petitioner is further informed that respondent contends in case No. 81 that the issues involved are much narrower than those raised in the complaint therein, or in petitioner's complaint, and petitioner

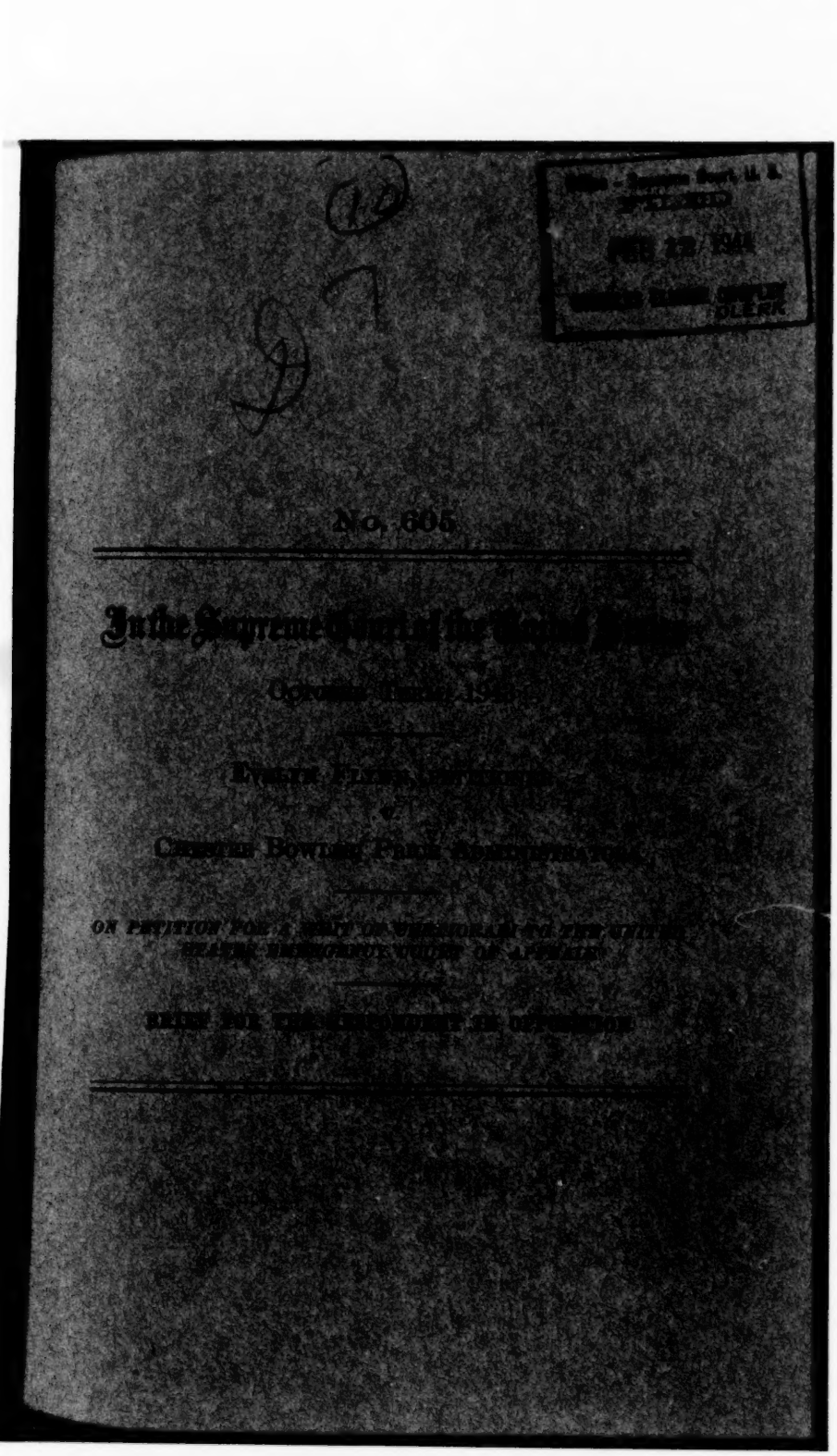
therefore believes that notwithstanding that some of the issues raised in each of these cases are similar that it will nevertheless be necessary for her to obtain an adjudication on the issues raised in her complaint, her interests being separate and distinct from those of the complainant in cause No. 81.

CONCLUSION.

This petitioner respectfully requests the indulgence of this Honorable Court for any omissions or defects herein resulting from the fact that she is not represented by counsel, and informs this Honorable Court that she is financially unable to do so because of the position she has been placed in by respondent. Petitioner requests time and permission to file a reply brief in the event this petition is opposed by the government or by respondent herein, and further requests that the matter be submitted on briefs as she will be unable to be present or to be represented at an oral hearing.

Dated, San Francisco, California,
January 8, 1944.

Respectfully submitted,
EVELYN FLYNN,
Petitioner In Propria Persona.



No. 605

In the Supreme Court of the United States

October Term, 1943

EVERETT FIELD, Petitioner,

v.

CHESTER BOWLES, Price Administrator, et al.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 605

EVELYN FLYNN, PETITIONER

v.

CHESTER BOWLES, PRICE ADMINISTRATOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The United States Emergency Court of Appeals rendered no opinion; its judgment appears at R. 52 and R. 56–57.

JURISDICTION

The judgment of the United States Emergency Court of Appeals was entered on December 2, 1943, and amended on December 15, 1943 (R. 52, 56–57). The petition for a writ of certiorari was filed on January 14, 1944. Jurisdiction of this Court is invoked under Section 204 (d) of the

Emergency Price Control Act of 1942, as amended, 56 Stat. 23, 765 (sometimes referred to herein as "the Act").

QUESTIONS PRESENTED

Whether petitioner's complaint in the Emergency Court of Appeals was properly dismissed by that court without consideration of the merits of the objections asserted in the complaint to the order of the Acting Area Rent Director and to the provisions of the Maximum Rent Regulation.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Emergency Price Control Act of 1942, as amended, of Maximum Rent Regulation No. 28, and of Revised Procedural Regulation No. 3 are set forth in the Appendix, *infra*, pages 11–17.

STATEMENT

On June 30, 1942, the Price Administrator issued Maximum Rent Regulation No. 28, effective July 1, 1942, establishing maximum rents for housing accommodations other than hotels and rooming houses in the San Francisco Bay Defense-Rental Area.[1] Petitioner, on April 2, 1943, filed in the San Francisco Defense-Rental Area Office of the Office of Price Administration a petition for permission to withdraw her furniture

[1] Redesignated the Rent Regulation for Housing, 8 F. R. 7322.

and furnishings from the housing accommodations located at 530 Larkin Street, San Francisco, California (R. 12–15). This petition was considered by the Acting Area Rent Director as a petition filed pursuant to Section 5 (b) (2) of the Regulation, *infra*, pp. 13–14. On September 14, 1943, the Acting Rent Director of the Area Office issued an order denying the petition (R. 15–16).

The administrative procedure with respect to rent petitions and protests is set forth in Revised Procedural Regulation No. 3.[2] Section 1300.209 (a) of that Regulation, *infra*, pp. 15–16, provides that any landlord whose petition for adjustment or other relief has been denied in whole or in part may file an application for review of such determination by the appropriate Regional Office. Any landlord whose application for review is denied by the Regional Administrator in whole or in part may, pursuant to Section 1300.215 of the Procedural Regulation, file a protest with the Price Administrator. Sections 1300.209 and 1300.215 of the Procedural Regulation establish certain exceptions to the provisions for filing applications for review; under these sections, any landlord subject to an order determining a disputed, doubtful or unknown fact necessary to the establishment of a maximum rent, or to an order entered by the Area Rent Director on his own initiative under Section 1300.207 of Revised Procedural Regula-

[2] 8 F. R. 526, 1798, 3534, 5481.

tion No. 3, may file a protest against such order directly with the Price Administrator.

Although the order denying her petition did not fall within either of these exceptions, petitioner on September 17, 1943, filed with the Price Administrator a document entitled "Protest of Evelyn Flynn" in which she sought to have the Acting Rent Director's order of denial reviewed on the merits (R. 16–20). On September 27, 1943, before any action on the "protest" had been taken by the Administrator pursuant to Section 203 (a) of the Emergency Price Control Act, petitioner filed a complaint in the Emergency Court of Appeals (R. 1–9) alleging that her "Protest was denied by an order of the Office of Price Administration dated September 14, 1943, by which Complainant's Petition No. 30,482, Reg. VIII, was denied" (R. 2). The gravamen of the complaint was that the Acting Rent Director was in error in denying the original petition and that the Emergency Price Control Act and Maximum Rent Regulation No. 28 are invalid.

Subsequently, on October 9, 1943, an order was issued by the Administrator dismissing the protest and ordering it to be docketed as an application for review of the Acting Area Rent Director's order in the Regional Office of the Office of Price Administration for Region VIII (R. 20–21). The Administrator's order was accompanied by an opinion stating, as the grounds for dismissing the

protest, that the petitioner had failed to file an application for review of the order denying her petition and that petitioner was therefore not subject to an order against which a protest might be filed under Revised Procedural Regulation No. 3 (R. 21–23).

Respondent, on October 11, 1943, filed a motion to dismiss petitioner's complaint on the ground that it was jurisdictionally defective in that it did not allege or show that there had been a denial or partial denial of a protest filed by petitioner (R. 10–12). To cure this defect, petitioner on October 29, 1943, filed a motion for leave to amend her complaint by the addition of an allegation that her protest had been dismissed by the Administrator on October 9, 1943 (R. 30–31). On November 6, 1943, the Court denied respondent's motion to dismiss and granted petitioner's motion to amend her complaint, without prejudice to the right of respondent to move to dismiss the amended complaint upon "any grounds which he may deem appropriate, including grounds asserted in his motion filed October 11, 1943" (R. 37).

On November 18, 1943, respondent filed a motion, together with a supporting memorandum, to dismiss the amended complaint on the following grounds (R. 39–43):

(1) That the Administrator had properly dismissed petitioner's protest as a protest against the Acting Area Rent Director's order and or-

dered it redocketed as an application for review by the Regional Administrator;

(2) That since the Administrator, in dismissing the protest as a protest against the Acting Area Rent Director's order of denial, did not purport to review that order on the merits, the correctness of the denial was not properly before the Emergency Court of Appeals;[3]

(3) That since the protest filed by petitioner did not purport to be a protest against Maximum Rent Regulation No. 28, the Administrator had not so treated it, and therefore the validity of the rent regulation was not properly raised in the Emergency Court of Appeals; and

(4) That in any event, the protest, as a protest against the rent regulation, was not filed within the time specified in Section 203 (a) of the Act.

On December 2, 1943, the Emergency Court of Appeals entered a judgment dismissing petitioner's amended complaint (R. 52). A petition for rehearing filed by petitioner on December 13, 1943 (R. 53–56) was dismissed by an order of the Court dated December 15, 1943, which also amended the judgment in certain formal respects (R. 56–57).

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[3] Respondent stated in his motion papers that petitioner's application for review had been denied on November 17, 1943, and that petitioner might file an appropriate protest against this denial on the merits.

ARGUMENT

The only question properly presented by the petition for certiorari is whether the Emergency Court of Appeals correctly dismissed petitioner's complaint without consideration of the merits of the objections asserted therein against the Acting Area Rent Director's order and the Maximum Rent Regulation. We submit that the dismissal of the complaint without consideration of those objections was clearly correct because they had not been properly presented to, or considered by, the Price Administrator in protest proceedings in accordance with the provisions of Section 203 (a) of the Act.

In the complaint, petitioner sought to raise objections to the validity of the Acting Area Rent Director's order before exhausting her administrative remedies. Revised Procedural Regulation No. 3, governing the filing of petitions and protests with respect to rent regulations and orders, provides that orders of an area rent director, except in certain instances not relevant here,[5] are subject to review through the filing of an application for review with the Regional Administrator, and upon the denial of such an application, subject to further review through the filing of a protest with the Price Administrator. Because petitioner had not filed an application for review

[5] See pages 3–4, *supra*.

with the Regional Administrator but had filed her protest directly with the Price Administrator, the Administrator dismissed the protest and ordered that it be docketed with the Regional Administrator as an application for review of the Acting Area Rent Director's order. In her complaint, petitioner did not question the correctness of this dismissal and redocketing with the Regional Administrator, but instead continued to urge her substantive objections to the validity of the Acting Area Rent Director's order denying her petition. In dismissing the complaint, the court below merely decided that it could not properly consider the merits of those objections which had not been passed upon by the Price Administrator in a protest proceeding. This decision was compelled by the language of the Act and was in accordance with the previous decision of the court in *Safeway Stores, Inc.*, v. *Brown*, 138 F. (2d) 278 (E. C. A. 1943), certiorari denied, No. 481, present Term.

Similarly, objections to the validity of Maximum Rent Regulation No. 28 were not properly raised in the protest or in the amended complaint, and were not passed upon by either the Administrator or the Emergency Court of Appeals. The protest was treated by the Administrator as a protest solely against the order of the Acting Area Rent Director. The effect of the court's decision dismissing the complaint was to uphold the Administrator's determination that the document

filed by petitioner was not a proper protest against the Regulation and need not be docketed as such. The correctness of this decision is apparent from a reading of the protest. The vague contentions made in the protest with respect to the validity of the Act and the Regulation clearly failed to conform to the specific requirements contained in the Act. *Frank* v. *Henderson,* 133 F. (2d) 207 (U. S. E. C. A. 1942), certiorari denied, 318 U. S. 772; *Bogart Packing Company, Inc.* v. *Brown,* 138 F. (2d) 422 (E. C. A. 1943). In addition, even if the protest had properly set forth these objections, it was not filed within the sixty-day period specified by the Act. The Regulation was issued on June 27, 1942, and the protest was not filed until September 17, 1943, almost fifteen months later. Nor was there anything in the protest to suggest that, as a protest against the Regulation, it purported to be based upon grounds arising more than sixty days after the issuance of the Regulation. Cf. *Bogart Packing Company, Inc.* v. *Brown, supra.*

Petitioner's charge that the respondent has attempted to handicap or delay petitioner in obtaining judicial review of the Administrator's action in the Emergency Court of Appeals is entirely without justification. The Regional Administrator passed upon the application for review of the Acting Area Rent Director's order within six weeks of the dismissal of the petitioner's protest

and its redocketing with the Regional Office as an application for review. As respondent suggested in motion papers which were filed with the court below, the petitioner was then in a position to file with the Price Administrator a protest which would have provided a proper basis for review of the order in the Emergency Court of Appeals in the event that the protest was denied by the Administrator.[6] Any further delays or handicaps which petitioner has experienced in these proceedings have been due to her own insistence upon ignoring the provisions of the applicable procedural regulation and upon following a path different from that clearly outlined for her guidance.

CONCLUSION

The decision below is correct and does not warrant further review. The petition should therefore be denied.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

RICHARD H. FIELD,
Acting General Counsel,
Office of Price Administration.

FEBRUARY 1944.

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[6] Petitioner has referred in her brief to a companion case (No. 81) entitled *Taylor* v. *Bowles*, now pending before the Emergency Court of Appeals (Pet. Br. 24–25). That case involves the same housing accommodations and raises the question of the landlord's right to evict his tenants. The *Taylor* case is properly before the Emergency Court of Appeals on the merits of the issues involved.

APPENDIX

Pertinent provisions of the Emergency Price Control Act of 1942, c. 26, 56 Stat. 23, as amended, c. 578, 56 Stat. 765 (50 U. S. C. App., Supp. II, Sec. 901, *et seq.*), are as follows:

SEC. 203. (a) Within a period of sixty days after the issuance of any regulation or order under section 2, or in the case of a price schedule, within a period of sixty days after the effective date thereof specified in section 206, any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in support of such objections. At any time after the expiration of such sixty days any persons subject to any provision of such regulation, order, or price schedule may file such a protest based solely on grounds arising after the expiration of such sixty days. Statements in support of any such regulation, order, or price schedule may be received and incorporated in the transcript of the proceedings at such times and in accordance with such regulations as may be prescribed by the Administrator. Within a reasonable time after the filing of any protest under this subsection, but in no event more than thirty days after such filing or ninety days after the issuance of the regulation or order (or in the case of a price schedule, ninety days

after the effective date thereof specified in section 206) in respect of which the protest is filed, whichever occurs later, the Administrator shall either grant or deny such protest in whole or in part, notice such protest for hearing, or provide an opportunity to present further evidence in connection therewith. In the event that the Administrator denies any such protest in whole or in part, he shall inform the protestant of the grounds upon which such decision is based, and of any economic data and other facts of which the Administrator has taken official notice.

* * * * *

SEC. 204. (a) Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the Emergency Court of Appeals, created pursuant to subsection (c), specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part. A copy of such complaint shall forthwith be served on the Administrator, who shall certify and file with such court a transcript of such portions of the proceedings in connection with the protest as are material under the complaint. Such transcript shall include a statement setting forth, so far as practicable, the economic data and other facts of which the Administrator has taken official notice. Upon the filing of such complaint the court shall have exclusive jurisdiction to set aside such regulation, order, or price schedule, in whole or in part, to dismiss the complaint, or to remand the proceeding: *Provided*, That the regulation, order, or price schedule may be modified or rescinded by the Administrator at any time

notwithstanding the pendency of such complaint. No objection to such regulation, order, or price schedule, and no evidence in support of any objection thereto, shall be considered by the court, unless such objection shall have been set forth by the complainant in the protest or such evidence shall be contained in the transcript. If application is made to the court by either party for leave to introduce additional evidence which was either offered to the Administrator and not admitted, or which could not reasonably have been offered to the Administrator or included by the Administrator in such proceedings, and the court determines that such evidence should be admitted, the court shall order the evidence to be presented to the Administrator. The Administrator shall promptly receive the same, and such other evidence as he deems necessary or proper, and thereupon he shall certify and file with the court a transcript thereof and any modification made in the regulation, order, or price schedule as a result thereof; except that on request by the Administrator, any such evidence shall be presented directly to the court.

Pertinent provisions of Maximum Rent Regulation No. 28, redesignated the Rent Regulation for Housing, 8 F. R. 7322, are as follows:

SECTION 5. *Adjustments and other determinations.*—In the circumstances enumerated in this section, the Administrator may issue an order changing the maximum rents otherwise allowable or the minimum services required. * * *

* * * * *

(b) *Decreases in minimum services, furniture, furnishings, and equipment*—* * *

(2) *Decreases after effective date.* Except as above provided, the landlord shall, until the accommodations become vacant, maintain the minimum services, furniture, furnishings, and equipment unless and until he has filed a petition to decrease the services, furniture, furnishings, or equipment and an order permitting a decrease has been entered thereon; however, if it is impossible to provide the minimum services, furniture, furnishings, or equipment he shall file a petition within 10 days after the change occurs. When the accommodations become vacant the landlord may, on renting to a new tenant, decrease the services, furniture, furnishings, or equipment below the minimum; within 10 days after so renting the landlord shall file a written report showing such decrease. * * *

* * * * *

(d) *Orders where facts are in dispute, in doubt, or not known.* If the rent on the date determining the maximum rent, or any other fact necessary to the determination of the maximum rent is in dispute between the landlord and the tenant, or is in doubt, or is not known, the Administrator on petition of the landlord filed within 30 days after the effective date of regulation, or at any time on his own initiative, may enter an order fixing the maximum rent by determining such fact; or if the Administrator is unable to ascertain such fact he shall enter the order on the basis of the rent which he finds was generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date.

Pertinent provisions of Revised Procedural Regulation No. 3 (8 F. R. 526, 1798, 3534, 5481) are as follows:

§ 1300.207. *Action by rent director on his own initiative.*—In any case where the rent director pursuant to the provisions of a maximum rent regulation, deems it necessary or appropriate to enter an order on his own initiative, he shall before taking such action, serve a notice upon the landlord of the housing accommodations involved stating the proposed action and the grounds therefor.

§ 1300.209. *Applications for review.*—(a) Any landlord whose petition for adjustment or other relief has been dismissed or denied in whole or in part by the rent director, or any landlord subject to an order entered by the rent director on his own initiative, may within a period of sixty days after the date of issuance of such determination regardless of the effective date thereof, file with the rent director an application for review of such determination by the regional administrator for the region in which the defense-rental area office is located: *Provided,* That any landlord subject to an order entered under section 5 (d) of any maximum rent regulation or subject to an order entered by the rent director under § 1300.207 of this regulation, may either apply for review of such order as provided in this section, or may protest any provision of such order as provided in §§ 1300.215 to 1300.223, inclusive, of this regulation. An application for review shall be filed in trip-

licate upon forms prescribed by the Administrator and pursuant to instructions stated on such forms. Upon the filing of an application for review of such determination, the rent director shall forward the record of the proceedings with respect to which such application is filed to the appropriate regional administrator.

(b) Applications for review shall be deemed filed on the date received by the rent director: *Provided,* That applications for review properly addressed to the rent director, bearing a postmark dated within the sixty-day period specified above, but received after the expiration thereof, shall be deemed to have been filed on the date of the postmark.

§ 1300.210. *Action on applications for review.*—Upon the filing of an application for review in accordance with § 1300.209 of this regulation, and after due consideration, the regional administrator may affirm, revoke, or modify, in whole or in part, the determination of the rent director sought to be reviewed and may enter such order as is necessary or proper. In any case where an application for review does not conform in a substantial respect to the requirements of this regulation, the regional administrator may dismiss such application. An order entered by a regional administrator upon an application for review shall be effective and binding until changed by further order and shall be final subject only to protest as provided in §§ 1300.215 to 1300.228, inclusive, of this regulation. An order entered by a regional administrator upon an application for review may be revoked or modified at any time upon due notice to the applicant.

§ 1300.215. *Right to protest.*—Any landlord subject to any provision of a maximum rent regulation, or of an order issued under § 1300.210 of this regulation, or of an order entered under section 5 (d) of any maximum rent regulation, or of an order entered by the rent director under § 1300.207 of this regulation, may file a protest in the manner set forth below. A landlord is, for the purposes of this regulation, subject to a provision of a maximum rent regulation or of an order only if such provision prohibits or requires action by him. Any protest filed by a landlord not subject to the provision protested, or otherwise not in accordance with the requirements of this regulation, may be dismissed by the Administrator.

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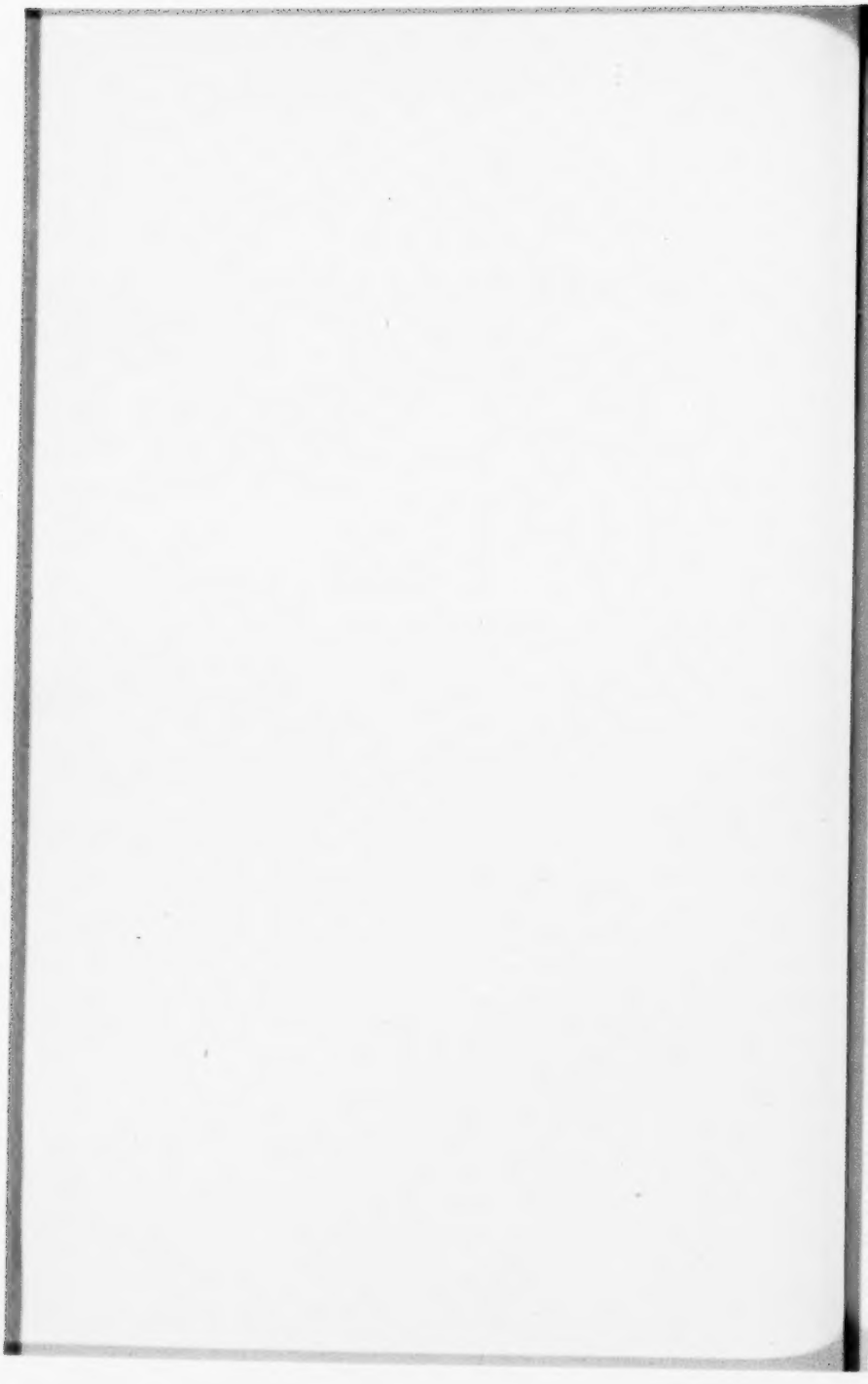

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1943

No. 605

EVELYN FLYNN,
Petitioner,
vs.
CHESTER BOWLES, Price Administrator,
Respondent.

On Petition for a Writ of Certiorari to the United States Emergency Court of Appeals.

PETITIONER'S REPLY BRIEF.

EVELYN FLYNN,
530 Larkin Street, San Francisco,
Petitioner in Propria Persona.

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PETITIONER'S REPLY BRIEF.

I.

OPENING STATEMENT IN REPLY.

Counsel for respondent bases his case and brief on the erroneous contention, entirely unsupported by the record, that the protest precedent to her complaint in the Emergency Court of Appeals was filed by petitioner against an *order* of the rent director and that consequently such protest was not properly filed until an application for review of the alleged

order had first been filed by petitioner and then denied by respondent. This contention of respondent is untenable. The record shows (R. 2, 25, 28), and respondent admits (R. 11, 22, 35, 41), that the protest was filed on September 13, 1943, at which time the alleged order had not been issued by the rent director.[1] The protest specified, in accordance with the provisions of Revised Procedural Regulation No. 3 (Sec. 1300:217) that it was against Maximum Rent Regulation No. 28 (R. 16, 17, 20) and other specified matters including

> "The *conduct* of the Administrator in the matter of her petition No. 30482, Region VIII, which she filed on April 2, 1943 and concerning which *no order or relief has been granted.*" (R. 16.)

Secondly, respondent erroneously contends that the said protest was not directed against Maximum Rent Regulation No. 28, that if it was it was filed too late; that anyway the contentions made were too vague, and that there was nothing in the protest to suggest that, as a protest against the Regulation it purported to be based upon the grounds arising more than sixty days after the issuance of the Regulation.

Thirdly, respondent has omitted from the Appendix in the brief for respondent the provisions of the

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[1]On September 14, 1943, the day after petitioner filed her protest against the Maximum Rent Regulation No. 28, the conduct of respondent and other matters, respondent issued an order denying petition 8 S. F. 30482 and on October 9, 1943, respondent issued an order dismissing the protest and directed that it be considered as an application for review of his order of September 14, 1943, which had been issued after the filing of the protest, and which itself constituted a denial or partial denial of the protest. (R. 2, 25.)

Revised Procedural Regulation No. 3 pertinent to this case and has set forth instead wholly irrelevant sections thereof.

These matters and other questions raised by respondent will now be considered under appropriate headings.

II.

PROTEST WAS NOT DIRECTED AGAINST AN ORDER.

Under "Questions Presented" of brief for respondent on page 2 of said brief and in respondent's "Statement" and "Argument", pages 3, 4, and 9 of said brief, counsel for respondent contends that petitioner filed her protest on September 17, 1943 and that the protest and the complaint filed subsequently thereto were directed against an order of respondent dated September 14, 1943. On page 4 of said brief counsel states that the protest was filed on September 17, 1943 and on page 9 "* * * the protest was not filed until September 17, 1943, * * *"

As indicated in part I hereof, and as shown by the record, pp. 2, 25, 28, and admitted by respondent on pp. 11, 22, 35, 41 of the record, the protest was filed on September 13, 1943, before the order of respondent dated September 14th was issued. On page 35 (bottom) of the record the following statement appears in a "memorandum" of respondent:

> "* * * Complainant seeks to treat her protest, *filed on September 13, 1943,* not only as * * *"

On page 41 (center) of the record the following statement appears in another "memorandum" of respondent to the Court:

> "The Regulation was issued on June 27, 1942,[2] and the protest was not filed until *September 13, 1943,* * * *."

On page 22 (top) of the record the following statement appears in an official "Opinion" of respondent:

> "On September 13, 1943, one day before the order denying Protestant's petition was issued, Protestant filed a copy[3] of the said document entitled 'Protest' with the Regional Office of the Office of Price Administration * * *."

Thus it is conclusively shown by the record, and admitted by respondent, that the protest was filed before the order was issued, and it is also stated in the protest that at the time of making same no order had been issued on her petition. (R. 16, 19.) This fact was known to respondent and admitted. (R. 22

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[2]It is admitted by respondent in its brief, page 2, under Statement, that Maximum Rent Regulation No. 28 was issued on *June 30, 1942* and made effective the next day on July 1, 1942.

[3]The acknowledgment of service by the chief attorney for respondent set forth on page 20 of the record shows that *six copies* were served upon him. See also R. 25, and R. 2, to the effect that six copies (an original and five copies) were filed in San Francisco and another original and five copies were filed with the secretary of respondent in Washington, D. C. As stated in petitioner's opening brief, page 21 (bottom) and page 22, respondent omitted from the endorsement appearing on page 20 of the record, the date of service. On each of the six copies forwarded to respondent the date of service was shown to be September 13, 1943. This matter was called to the attention of the Court by letter. (Petitioner's Brief in Support of Petition, page 22.) This letter to the Court was dated October 21, 1943. (R. 45.)

quoted above, see also R. 11.) In the order of respondent "dismissing" the protest, respondent states:

> "The said protest does not comply with the provisions of Revised Procedural Regulation No. 3 in that it was not filed against an order described in section 1300:214 of the Regulation." (R. 21.)

It is obvious that the protest was not directed against the "Order" of respondent which was not issued until after the protest was filed.

III.

THE PROTEST WAS DIRECTED AGAINST MAXIMUM RENT REGULATION NO. 28.

The protest which is set forth in the record, pp. 16-20, states on its face that it is against Maximum Rent Regulation No. 28 and specifies the date of issuance thereof (R. 16) as required by Revised Procedural Regulation No. 3 (Section 1300:217(c)) when the protest is against a maximum rent regulation.

Since there would be no occasion for mentioning the regulation or the date of issuance thereof in the manner there set forth unless the protest was directed against said Regulation it is apparent that such was the intent and purport of said protest.

IV.

THE PROTEST COMPLIED WITH THE REQUIREMENTS OF THE EMERGENCY PRICE CONTROL ACT OF 1942 AND REVISED PROCEDURAL REGULATION NO. 3 AS A PROTEST AGAINST MAXIMUM RENT REGULATION NO. 28.

(1) Contrary to the contention of respondent (item 4, p. 6 of its brief), Section 203(a) of the Act provides that *"any person"* subject to *"any provision"* of a regulation may file a protest against such regulation *"at any time"*, providing only that where such protest is filed after the expiration of sixty days from the effective date of the regulation that such protest is to be

> "* * * based solely on grounds arising after the expiration of such sixty days."

It cannot be denied that the protest was based solely on grounds arising after the expiration of such sixty days. The effective date of Maximum Rent Regulation No. 28 was July 1, 1942, and the earliest action of respondent protested or complained of therein was fixed as of November 2, 1942 (R. 16), more than 120 days after the effective date of the Regulation. The protest further specified on its face in part V thereof the facts forming the basis of the protest and including the acts of respondent from November 9, 1942 to September 3, 1943. (R. 18-19.)

(2) Counsel for respondent has set forth on pp. 15 to 17 of the brief for respondent the alleged "Pertinent provisions of Revised Procedural Regulation No. 3." With the exception of Section 1300: 215, *Right to Protest*, which he has set forth on page

17, all the provisions therein cited are wholly irrelevant and immaterial to the facts of this case. Counsel has omitted from the Appendix Section 1300:216 to Section 1300:220, inclusive, which sections set forth the time and place for filing protests, and the form and contents thereof. For the convenience of the Court these provisions, with the relevant parts of Section 1300:215, are set forth in the Appendix on page i hereof.

(3) Going now to test the protest by these relevant provisions of Revised Procedural Regulation No. 3 and considering the contentions of respondent relating to the protest in connection therewith, we find that Section 1300:217, *Form of Protest,* provides:

> "Every protest shall be clearly designated a 'Protest' and shall contain, *upon the first page thereof,* (a) the name of the protestant and of the defense-rental area for which the maximum rent regulation or order protested was issued, (b) a statement whether the protest is against a maximum rent regulation or order, and (c) the date of issuance and the number of such maximum rent regulation or order. * * *"

The section further provides that the protest shall be double spaced except for quotations, etc.

It must be apparent from the requirements of this section and the scope of information to be included upon the "first page" that this first page is in the nature of a title page and summary of the matter involved in the protest and that no more specific detail was required or expected than was specified.

Section 1300:219, *Contents of Protest,* specifies in subsections (a) to (g) what every protest shall contain. Reverting again to the requirements of Section 203(a) of the Emergency Price Control Act of 1942 (herein called the Act), that section specifically states that protests may be filed, "in accordance with regulations to be prescribed by the Administrator." An examination of the protest (R. 16-20) will disclose that it conforms explicitly with the requirements of the Act and regulations herein enumerated and in the order set forth by such regulation.

Respondent, however, claims that petitioner's contentions made in the protest with respect to the validity of the Act and the Regulation are unlawfully vague.

In the consideration of this point it is obvious that neither the Act or the Regulation contemplates or requires that a protestant shall specify his objections to the Act in a protest to the Administrator. The Administrator has no authority to consider or rule upon the validity of any portion of the Act. In view of the "exclusive jurisdiction" provision of Section 204(d) of the Act, however, the protestant must, if that section be valid, raise any question of the constitutionality of the Act or Regulation through the procedure of protest and complaint to the Emergency Court of Appeals set up under Sections 203 and 204 of the Act.

But what are these contentions which respondent terms unlawfully vague?

Petitioner alleged (R. 16-20):

That she was not rightfully subject to the Regulations cited, but that she had been wrongfully barred from the possession and control of her property by respondent *as shown by Petition No. 30,482 and the evidence and testimony given in support thereof* and that respondent had taken and was taking her property for the free use of tenants and without just compensation or due process of law.

That the property involved consisted of furniture and furnishings located at 530 Larkin Street in San Francisco, California, and more particularly described and located in the Petition 30,482.

That she objected to such provisions of the Act and Regulations (unknown to her) and to the acts and omissions of respondent pursuant thereto which had resulted in the improper and unlawful taking of her property without just compensation and without due process.

Petitioner cited in support of her objections the Constitution of the United States, her ownership of the property, *and all the allegations, evidence and testimony in the Petition 30,482 Region VIII, and given pursuant thereto,* and petitioner thereupon incorporated into her protest by reference said petition and said evidence and testimony.

Then pursuant to the requirement of Section 1300:219, *Contents of Protest,* subsection (f) of Revised Procedural Regulation No. 3, which provides that in cases where the protest is based upon grounds

arising after the date of issuance of the Maximum Rent Regulation, the protest shall set forth:

> "a clear and concise statement of facts showing the time when such ground arose."

petitioner set forth in part V of her protest:

> "The Administrator filed an action against protestant on or about November 9, 1942, seeking to restrain her and to prevent the proper rental of protestant's property or the collection of the agreed rental therefor; a judgment was obtained against protestant in March, 1943, which judgment has been appealed from and is now pending on appeal in the United States Circuit Court of Appeals where it is entitled Taylor (et al.) v. Brown, No. 10,509, Ninth Circuit, that while said case is pending and for more than eight months protestant has been obliged to forego any just return for the use of her property which has a value of $15,000.00 and which is in the possession of tenants at 530 Larkin St., San Francisco; that the Administrator is compelling her to provide such furnishings in many cases without any compensation whatsoever; that in no case is she permitted to receive just compensation therefor; that the furnishings are being worn out and depleted by use and her equity therein is being destroyed. Protestant petitioned to the administrator to determine what rent she could collect for said furnishings. This petition was filed March 5, 1943 and docketed as No. 8-SF-30,089. It was denied on April 6, 1943. An application for review thereon was denied May 3, 1943. On April 2, 1943 protestant sought to withdraw her furnishings from rental, but by reason of the injunction against her was required to obtain the consent of

the administrator. The petition (30,482 Reg. 8) was filed on April 2nd, 1943, to obtain this permission. No order has as yet been given on this petition although more than five months has elapsed since the filing thereof, and protestant has suffered losses of $1000.00 in the interim. On September 3, 1943, Ward Cox, acting rent director, notified protestant that if she had any objections to a Report and Recommendation in the matter, which recommended that the petition be denied, that she must file such objections within ten days from the date of this report. The report was dated August 15, 1943."

Then in part VIII of her protest, petitioner alleged that the Act and all rent control regulations and orders thereunder were null and void and unconstitutional, and that said charge was supported by the evidence and facts therein and therefore submitted. (R. 16-20.)

It is respectfully submitted that there is nothing unlawfully vague about these contentions. Petitioner alleged that she was not rightfully subject to the Regulations (R. 17) and that she did not know what provision of the Act or of Maximum Rent Regulation No. 28 respondent might cite to sustain his actions and refusals to act as set forth in the protest. (R. 16.) Petitioner alleged and offered proof that under purported authority of the Act and Regulation, respondent had taken her property without just compensation and without due process, in violation of the Constitution of the United States, and that the Act and all

rent control regulations and orders thereunder were null and void and unconstitutional.

(4) Counsel for respondent has completely overlooked the specific detail contained in the allegations, evidence and testimony incorporated into the protest in part III thereof. (R. 18 (top).) A reading of Section 1300:220 (a) of the Procedural Regulation No. 3 show that it was not contemplated that a protestant should be required to file with the protest evidence and documents already in the possession of the administrator. Respondent has not objected to the incorporation of these matters into the protest. He merely says the protest is vague in its contentions concerning the Act and Regulation. Respondent has not produced or set forth in his exhibits the contentions concerning the Act and Regulations set forth in the collateral proceedings incorporated herein.[4] In these proceedings there is no want of specific detail on any relevant point.

(5) The statement set forth in part V of the protest (R. 18-19) and hereinbefore set forth in full is a complete answer to respondent's contention on page 9 of brief for respondent, that there was nothing in the protest to suggest that, as a protest against the Regulation, it purported to be based upon grounds

[4]Among the collateral proceedings record of which is incorporated into the evidence and record of Petition 30,482 by order of respondent June 16, 1943 and thereby made a part hereof (R. 18), are Protest MR-28-19-P and Protest 15, Region VIII, Petition No. 8-SF-30,089, Taylor v. Brown, U.S.E.C.A. No. 10, Brown v. Taylor et al. (Flynn), No. 22,364W, U.S. Dist. Ct. So. Div. of No. Div. Calif., and U. S. v. Taylor, No. 27,815-S, U.S. Dist Ct. So. Div. of No. Div. Calif.

arising more than sixty days after the issuance of the Regulation. The protest specified (R. 16) that the Regulation was issued on June 30, 1942 (admitted on page 2 of Brief for Respondent) and in part V (R. 18) the protest specified the facts, showing that the grounds upon which the protest was based had arisen on and after November 9, 1942, and complying with the requirements of Section 1300:219 (f) of the Procedural Regulation No. 3, heretofore cited.

V.

RESPONDENT HAS MISCONSTRUED AND MISSTATED THE RECORD.

Counsel for respondent has misconstrued and misstated the record in the brief for respondent in the following particulars:

(1) On page 4 (top) of said brief, counsel states:

> "Although the order denying her petition did not fall within either of these exceptions, petitioner on *September 17, 1943,* filed with the Price Administrator a document entitled 'Protest of Evelyn Flynn' *in which she sought to have the Acting Rent Director's order of denial reviewed on the merits.* (R. 16-20.)"

As has been heretofore developed at some length, the protest was filed on September 13, 1943, before any "order" denying the petition was issued and petitioner stated in said protest that no order had been issued on her petition. (R. 16.)

(2) Respondent's contention, pages 4-5 of brief for respondent, that the protest was dismissed because the petitioner had not filed an application for review of the order denying her petition and that by reason of this fact was not subject to an order against which a protest might be filed under Revised Procedural Regulation No. 3, is not in strict accord with the record, nor is the opinion and order of respondent there construed relevant or material to this case except in so far as it constituted a denial or partial denial of the protest.

Considering what actually appears in the record relating to these matters, we quote from the actual order of respondent set forth at the top of page 21 of the record, to-wit:

> "The said protest does not comply with the provisions of Revised Procedural Regulation No. 3 in that it was not filed against an order described in Section 1300:214 of the Regulation.
>
> Therefore, under authority vested in the Administrator by the Emergency Price Control Act of 1942, and in accordance with Revised Procedural Regulation No. 3, it is ordered
>
> (1) That the said protest be and it hereby is, dismissed.
>
> (2) That the said protest be docketed in the Regional Office of the Office of Price Administion for Region VIII as an application for review.
>
> Issued and effective this 9 day of October, 1943.
>
> George J. Burke, Acting Administrator."

Section 1300:214 of Revised Procedural Regulation No. 3 and above cited does not refer to orders or describe any orders whatsoever, so on its face the declaration and order above is meaningless as to the grounds advanced, but it is to be noted that on page 22 of the record, in the "opinion" accompanying the order, respondent sets forth what he alleges to be Section 1300:214 of the Procedural Regulation. An examination of this section, designated "Right to Protest", discloses that it is in fact Section 1300:215 of said Regulation. (See Brief for Respondent, page 17.)

Section 1300.215 provides in part:

> "*Right to Protest.* Any landlord subject to any provision of a *maximum rent regulation,* OR *of an order* * * * may file a protest in the manner set forth below."[5]

Since the "protest" was not directed against an "order" but against Maximum Rent Regulation No. 28 in full accord with the quoted sections of the Procedural Regulation, it must be evident that the order "dismissing" the protest was improper. This order "dismissing" the protest was issued on October 9, 1943, and on October 11, 1943, respondent filed its first motion to dismiss the complaint of petitioner, basing said motion in large part on the aforesaid order issued two days previously. (R. 11.)

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[5]Refers to Sections 1300.216 to 1300.219 set forth in the appendix hereto.

(3) Contrary to respondent's contention on page 5 of its brief that petitioner moved to amend her complaint to cure a *defect* therein, the record shows that petitioner maintained at all times that her complaint was good, and that respondent's order dated September 14, 1943, was in fact a denial or partial denial of her protest. (R. 23 (bottom), 28.) Since respondent had issued his later order "dismissing" the protest *after* the complaint had been filed, and, "to avoid any possible delay or technical defect in her complaint", petitioner moved to amend concurrently with her "Objections and Answer to Respondent's Motion to Dismiss etc." (R. 23-30.)

The Court did not rule that the complaint was defective without the amendment but denied respondent's contentions by order dated November 6, 1943. (R. 37.)

(4) The grounds set forth on pages 5 and 6 of brief for respondent, purporting to be the grounds stated in respondent's motion and memorandum to dismiss the amended complaint, should be compared with the grounds as set forth in the record itself. (R. 39, 43.)

In answer to the points raised therein, petitioner adopts the statement of facts and argument set forth by her and included in the record herein on pages 43 to 52 to which this Honorable Court is respectfully referred.

VI.

RESPONDENT UNLAWFULLY SEEKS TO DEPRIVE PETITIONER OF A RIGHT OF JUDICIAL REVIEW VESTED IN HER BY THE ACT AND BY THE CONSTITUTION OF THE UNITED STATES.

The evident purpose of respondent's contentions, and the effect thereof if they be sustained, is to deprive this petitioner of a right of judicial review vested in her by Sections 203 and 204 of the Act, and guaranteed to her by the Fifth Amendment to the Constitution of the United States.

As pointed out in petitioner's brief in support of her petition for writ of certiorari, pages 18-20, petitioner's property had been taken and withheld from her without compensation for more than ten months before the filing of her complaint in the Emergency Court of Appeals. See also the record. (R. 5, 14, 17-19, 27.)

The Court through the agency of which respondent deprived petitioner of her property was prohibited from considering the validity of the authority of respondent relating thereto by the provisions of Section 204(d) of the Act. (R. 28, 52 (top).)

Petitioner does not seek judicial review of the order of the rent director denying her petition *under the Regulation.*

The Act and Regulation confer such broad discretion and powers upon the Administrator that such a review would be an idle act where as shown herein it is the purpose of respondent to deprive petitioner of her property and where he has for more than a

year refused all administrative relief and has refused to inform her as to what rents she may collect for her property which he insists must be left in the possession of tenants without compensation. (R. 5, 14, 15-16, 18-19, 20-21.) Petitioner in this situation sought judicial review of the *basic authority of respondent* to take her property without just compensation or due process and of his authority to withhold said property from her against her will and desire. It is obvious that judicial review of this authority may only be had under the Act by an attack upon the Regulation (Maximum Rent Regulation No. 28) and upon the provisions of the Act itself which confer this broad authority and discretion upon respondent.

This was the purpose and intent of petitioner's protest and complaint as plainly shown by the text and substance thereof. (R. 1-9, 16-20.) And this right of review is specifically granted by the Act. (Sections 203 and 204.)

As we have shown herein and heretofore, the protest and complaint as amended complies in every respect with the requirement of the Act and the Procedural Regulation which is itself under attack herein. (R. 1-56.)

VII.

CONCLUSION.

It is respectfully submitted that the questions presented and properly before this Honorable Court

are those questions submitted on pages seven to nine of the petition for writ of certiorari herein.

The cases cited by respondent are not applicable to this case as it is admitted here that there was a dismissal of the protest before amendment to the complaint. Respondent states in the record, page 42:

> "* * * the Administrator has therefore assumed that for the purposes of providing the right of review, an order of dismissal is a denial within the meaning of Section 204." (R. 42.)

Respondent, however, raised the point that where a protest had been "dismissed" that in such a case the Court could not consider the protest or complaint on its merits but could only consider whether the dismissal was proper. (Brief for Respondent, pp. 6, 8; R. 41-43.)

Respondent argues, page 7 of its brief and in the record on pages 42 and 43, that he (the administrator) should have been given an opportunity to "consider" the merits of the protest and write an opinion thereon and that until he does so the Court may not consider the "merits" of protest or complaint. These contentions have been answered by petitioner in the record on pages 51 and 52. The administrator has had his opportunity, he has reviewed and rereviewed the matters involved since November 9, 1942. In the collateral cases, protests, petitions and applications for review which are a part of the record of petition 30,482 and incorporated into protest and complaint herein are no less than

seven considered opinions or judgments which have been reviewed by respondent or issued by him and which cover every phase of the matters on which the protest was based. (R. 51, 5, 14, 18-19.)

It is to be observed, also, that in her *"Petition for Rehearing or Modification of Judgment"* set forth in the record on pages 53-56, petitioner requested as one alternative that the Court modify its judgment by—

> "(1) Remanding the proceedings and instructing respondent to consider and act upon complainant's protest upon its merits as relating to the entire controversy and actions therein protested commencing with the filing of injunction proceedings against complainant on November 9, 1942 as set forth in paragraph V of said protest." (R. 53.)

This prayer of petitioner was denied by the Court. (R. 56-57.)

The Court also refused to inform petitioner of the grounds upon which the complaint was dismissed and refused to grant petitioner declaratory or any other relief. (R. 56-57, 53.)

When respondent first raised objections to the complaint (which were later overruled by the Court), petitioner pointed out (R. 27)—

> "Complainant's cause of action against respondent is grounded upon specific acts of said respondent directed against her and her property and dating from November 2, 1942, and the issues and questions have been before him con-

tinuously up to the present time. If he wished to act concerning them other than as he has, he would have done so before this.

It is therefore evident that the dismissal is sought for purposes of delay. There is nothing to preclude the Administrator from granting relief or acting on the problems involved while the case is pending. (Section 204(a) of Act.)"

This suggestion was filed with the Court on October 21, 1943, over four months ago. (R. 23, 27.) As reflected by the record (R. 54) respondent has not attempted to compose or remedy the difficulties under which petitioner labors but after dismissal of the complaint has redoubled his efforts to further harass petitioner. (See also page 20 of Petitioner's Brief in Support of Petition for Writ of Certiorari.)

It is respectfully submitted that the petition should be granted.

Dated, San Francisco, California,
February 23, 1944.

EVELYN FLYNN,
Petitioner in Propria Persona.

(Appendix Follows.)

Appendix

PERTINENT PROVISIONS OF REVISED PROCEDURAL REGULATION NO. 3 AS AMENDED TO JULY 1, 1943, ARE AS FOLLOWS:

SUBPART C—PROTESTS

§ 1300.215. *Right to protest.*—Any landlord subject to any provision of a maximum rent regulation, or of an order issued under § 1300.210 of this regulation, or of an order entered under section 5 (d) of any maximum rent regulation, or of an order entered by the rent director under § 1300.207 of this regulation, may file a protest in the manner set forth below. A landlord is, for the purposes of this regulation, subject to a provision of a maximum rent regulation or of an order only if such provision prohibits or requires action by him. Any protest filed by a landlord not subject to the provision protested, or otherwise not in accordance with the requirements of this regulation, may be dismissed by the Administrator.

§ 1300.216. *Time and place for filing protests.*—(a) Any protest as provided in § 1300.215 of this regulation against a provision of a maximum rent regulation or an order, shall be filed with the Secretary, Office of Price Administration, Washington, D. C., within a period of sixty days after the date of issuance of such regulation or order, regardless of the effective date thereof: *Provided,* That a protest against a provision of a maximum rent regulation based solely on grounds arising after the date of issu-

ance of such maximum rent regulation shall be filed within a period of sixty days after the protestant has had, or could reasonably have had, notice of the existence of such grounds.

(b) Protests shall be deemed filed on the date received by the Secretary, Office of Price Administration, Washington, D. C.: *Provided,* That protests properly addressed to the Secretary bearing a postmark dated within the applicable sixty-day period specified above, but received after the expiration thereof, shall be deemed to have been filed on the date of the postmark.

§ 1300.217. *Form of protest.*—Every protest shall be clearly designated a "Protest" and shall contain, upon the first page thereof, (a) the name of the protestant and of the defense-rental area for which the maximum rent regulation or order protested was issued, (b) a statement whether the protest is against a maximum rent regulation or order, and (c) the date of issuance and the number of such maximum rent regulation or order. One original and five copies of the protest and of all accompanying documents and briefs shall be filed. Each copy shall be printed, typewritten, mimeographed or prepared by a similar process, and should be plainly legible. Copies shall be double spaced, except that quotations shall be single spaced and indented.

§ 1300.218. *Assignment of docket number.*—Upon receipt of a protest it shall be assigned a docket number, of which the protestant shall be notified, and

all further papers filed in the proceedings shall contain on the first page thereof the docket number so assigned and the information specified in § 1300.217 of this regulation.

§ 1300.219. *Contents of protest.*—Every protest shall set forth the following:

(a) The name and the post office address of the protestant, the manner in which the protestant, is subject to the provision of the maximum rent regulation or order protested, and the location, by post office address or otherwise, of all housing accommodations involved in the protest.

(b) The name and post office address of the person filing the protest on behalf of the protestant and the name and post office address of the person to whom all communications from the Office of Price Administration relating to the protest shall be sent.

(c) A clear and concise statement of all objections raised by the protestant against the provision of the maximum rent regulation or order protested, each such objection to be separately stated and numbered.

(d) A clear and concise statement of all facts alleged in support of the objections.

(e) A statement of the relief requested by the protestant including, if the protestant requests modification of a provision of the maximum rent regulation or order, the specific changes which he seeks to have made therein.

(f) In cases where the protest is based upon grounds arising after the date of issuance of the maximum rent regulation, a clear and concise statement of facts showing the time when such grounds arose.

(g) A statement signed and sworn to (or affirmed) by the protestant personally or, if a partnership, by a partner or if a corporation or association, by a duly authorized officer, that the protest and documents filed therewith are prepared in good faith and that the facts alleged are true to the best of his knowledge, information and belief. The protestant shall specify which of the facts are known to him to be true and which are alleged on information and belief.

§ 1300.220. *Affidavits or other written evidence in support of protest.*—Every protestant shall file together with his protest the following:

(a) Affidavits setting forth in full all the evidence, the presentation of which is subject to the control of the protestant, upon which the protestant relies in support of the facts alleged in the protest. Each such affidavit shall state the name, post office address, and occupation of the affiant; his business connection, if any, with the protestant; and whether the facts set forth in the affidavit are stated from personal knowledge or on information and belief. In every instance, the affiant shall state in detail the sources of his information: *Provided,* That on a protest of an order, the evidence and all documents

in proceedings had in connection therewith, shall be a part of the record on protest and need not be filed by the protestant.

(b) A statement by the protestant in affidavit form setting forth in detail the nature and sources of any further evidence, not subject to his control, upon which he believes he can rely in support of the facts alleged in his protest.

(12)

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1943

No. 605

EVELYN FLYNN,
Petitioner,

vs.

CHESTER BOWLES, Price Administrator,
Respondent.

On Petition for a Writ of Certiorari to the United States Emergency Court of Appeals.

PETITION FOR A REHEARING.

EVELYN FLYNN,
530 Larkin Street, San Francisco, California,
Petitioner in Propria Persona.

Parker Printing Co., San Francisco, California

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On Petition for a Writ of Certiorari to the United States Emergency Court of Appeals.

PETITION FOR A REHEARING.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Comes now the petitioner Evelyn Flynn and prays that this Honorable Court rehear and reconsider her petition herein which was denied by the Court on February 28, 1944.

The grounds for rehearing upon which the petitioner bases her prayer are as follows:

1. This Honorable Court was misinformed by respondent in the brief for the respondent in opposition as to the facts of the case and the regulations and law governing the procedure involved. These matters are set forth in petitioner's reply brief which did not reach the Court until March 1, 1944, two days after certiorari was denied.

2. Petitioner was precluded or prevented from filing her reply brief in time for the consideration of this Honorable Court prior to February 28, 1944 by reason of the failure or neglect of respondent to promptly serve upon petitioner a copy of the aforesaid brief for the respondent in opposition. Service of said brief for respondent was not made upon petitioner until Friday, February 18, 1944. On Monday, February 21, 1944, petitioner's reply brief was placed in the hands of the printer in San Francisco. On February 25, 1944 (a holiday intervening) the brief was completed and 40 copies thereof were placed in the mail, registered and special delivery, addressed to the clerk of this Honorable Court. Thus petitioner had forty copies of her printed reply brief in the mail, special delivery, within seven days of the time she received the brief for respondent and in said seven days were included a Sunday and a holiday. The reply brief did not reach the Court until two days after the decision was rendered. This was not due to any neglect or delay upon the part of the petitioner.

3. In petitioner's brief in support of petition for writ of certiorari, filed with her original petition

herein, on page 26 thereof, petitioner specifically requested

> "time and permission to file a reply brief in the event this petition is opposed by the government or by respondent herein, * * *"

This privilege is further provided for by Rule 27 of this Honorable Court, but petitioner received no notice of hearing of the case, and considering the distance separating petitioner from the Court, had no opportunity to file her reply brief prior to the hearing.

4. The denial of certiorari herein is contrary to law, in that it deprives this petitioner of a right of judicial review vested in her by the Emergency Price Control Act of 1942 (Sections 203, 204) and guaranteed to her by the Fifth Amendment to the Constitution of the United States. (See pages 17, 18 of Petitioner's Reply Brief.)

5. If the exclusive jurisdiction provisions of Section 204(d) of the Emergency Price Control Act of 1942 are valid, this petitioner has no other method or right of judicial review of the taking of her property by respondent without compensation, and in such case this Honorable Court should not permit the United States Emergency Court of Appeals to refuse to review the case on its merits. It is respectfully submitted that it is the duty of this Honorable Court in the case at bar to either declare these exclusive jurisdictional provisions invalid as applied to petitioner or to enforce them in favor of petitioner to

the end that petitioner may have her rights determined.

In order that this Honorable Court may have a better understanding of the facts, and of practices of respondent, petitioner sets forth in the appendix attached hereto and made a part hereof, excerpts of proceedings before the Office of Price Administration relating hereto. These excerpts show:

(a) That petitioner has been denied all administrative relief by respondent; that she is denied possession of her property and denied knowledge of what charges, if any, she may make for the use of same in possession of tenants. (Appendix p. i.)

(b) That control and disposition of petitioner's property has been placed by respondent in the hands of an official who seeks either for himself or for respondent to purchase the real estate "at the best figure possible". (Appendix p. i.) That the only alternative offered the owner to selling his property to said official at his price was to abandon and give up the property to the holder of the mortgage, possession being denied the owner by respondent. (Appendix p. iii.)

(c) That where owners have been deprived of any rent for their property for long periods of time (9 months in the case cited) and then seek in the local courts to have their rights adjudicated or to collect from the tenant the amount agreed upon, respondent resorts to intimidation and obtains the dis-

missal of the actions by threatening the principals, assignees and attorneys with criminal prosecution unless said actions be dismissed. (Appendix p. v.)

In no other field of price control is the seller required to give four improved units for the price he previously charged for three inferior ones.

In no other field of price control is a person compelled under penalty of fine and imprisonment to continue in business at heavy and continual losses.

As shown by the graphs at the end of the appendix, rents have been frozen at their worst relative position since statistics have been kept by the U. S. Bureau of Labor covering a period of over 29 years. OPA has frozen San Francisco rents at a point less than 5% above the 1914 level, while in the meantime wages have more than tripled and general prices have nearly doubled. Farm prices which stood well above the 1914 level in 1939 have doubled since then as a result of "conscious price policy" on the part of OPA. (Third Quarterly Report of the Office of Price Administration to Congress for the period ended October 31, 1942, p. 22.)

That this inequity has been imposed upon the greater part of the nation's landlords is shown by the graph at the close of the appendix attached hereto, in which the rents in San Francisco are compared with the rents in thirty-four large cities of the United States.

Petitioner prays that in the consideration hereof by the Court, that the Court accept and consider petitioner's reply brief and cause same to be filed herein, forty copies thereof being in possession of the clerk of the Court and service having been made upon respondent.

Dated, San Francisco, California,
March 21, 1944.

Respectfully submitted,
EVELYN FLYNN,
Petitioner in Propria Persona.

State of California,
City and County of San Francisco.—ss.

Evelyn Flynn, being first duly sworn, certifies, that she is the petitioner in the foregoing petition, that she is acting as her own counsel herein and that she presents this petition for rehearing in good faith and not for delay.

EVELYN FLYNN.

Subscribed and sworn to before me this 21st day of March, 1944.

(Seal) ELLA COOK KELLY,
Notary Public in and for the City and County of San Francisco, State of California.

My commission expires December 23, 1944.

(Appendix Follows.)

Appendix

STIPULATION OF DAVID C. DUNLAP, ESQ., ATTORNEY FOR RESPONDENT IN OPEN COURT DECEMBER 20, 1943 IN THE CASE OF CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, PLAINTIFF, v. STANLEY W. TAYLOR, ISABELLE D. TAYLOR AND EVELYN FLYNN, No. 22,364-G, U. S. DIST. CT. SO. DIV., NO. DIST. CALIF.

"Mr. Dunlap. We would like to stipulate also as follows, your Honor, so that I won't need to introduce proof on it: that after the injunction was issued in this pending case, Mrs. Flynn petitioned the OPA to have a separate apportionment of the rental payments of March 1, 1942 cover her ownership of the furniture, and that petition was dismissed and a review was denied; that thereafter Mrs. Flynn filed a petition with the OPA asking that under 4(d) of the Emergency Price Control Act of 1942 that she be permitted to withdraw her property from the rented units; that petition was denied; and that thereafter she came before this court sometime in May of 1943 and asked the Court for an apportionment or interpretation of the injunction as to whether or not she could collect for her furniture at the March 1, 1942 rental, and the Court did not make any adjudication in that regard."

TESTIMONY OF WARD COX, ASSISTANT REGIONAL RENT EXECUTIVE FOR RESPONDENT IN REGION VIII (WHICH INCLUDES SAN FRANCISCO).

This testimony concerns the property at 530 Larkin Street wherein petitioner is required by order of the

same Ward Cox (serving as Acting Rent Director for respondent) to leave her property of a value of $15,000.00 for the free use of tenants. (R. 16.)

Mr. Luther Carr, Esq., for the Office of Price Administration, Respondent.

Mr. Taylor, for the Protestant in Protest 15 Reg. VIII.

"In response to Mr. Carr's question as to whether or not Mr. Cox thought the apartment house was a good investment, Mr. Cox replied as follows:

I believe we did touch upon that. I believe Mr. Taylor asked me what I thought the units were worth furnished, and I made the statement that I wasn't up there for that purpose, to determine by any comparability survey just what those units were worth furnished. I did say, though, if this is permissible in the record, with Mr. Taylor's permission, that I would like to buy the building: I thought I could make a deal at my price, seeing that he was dissatisfied with it."

"Mr. Cox. I know a couple more buildings, one on O'Farrell and one on Turk, they claim—I can substantiate it very easily by records—they claim in one case there are 47 units and they return $8600.00 net per year, before depreciation; that on another 37 units they claim $8700.00 net per year without depreciation. And I understand you can buy them for $75,000.00. Therefore, my willingness to pay Mr. Taylor $75,000.00 for this piece.

Mr. Taylor. You offered $70,000.00.

Mr. Cox. Did I? If you want that in the record, I would just say this. As an ex-real

estate operator, you would try to purchase something at the best figure possible, wouldn't you?*

Mr. Taylor. That's true. We're not blaming you for offering $70,000.00. I just want to get the amount of the offer clear on the record.

Mr. Cox. You understand, counsel, that any offer made in this sense is not binding at all."

(Pages 46-47 of record in Pet. of Evelyn Flynn 8-S.F. 30482.)

Testimony of Ward Cox continued, on being questioned as to what the owners might do, since they were not permitted to charge for the facilities and services provided, and not permitted to recover possession of the property.

---

*The real property involved is a modern six-story steel frame and concrete building constructed in 1928-1929 at a total cost, including land, of approximately $175,000.00; it is located in the heart of downtown San Francisco two blocks north of the Civic Center and has a present market value of approximately $125,000.00.

It was in the hands of a bankruptcy Court in 1940 and 1941 and substantial improvements were made by the new owners who purchased it in August of 1941. Additional services were also provided the tenants.

In November of 1942 the Office of Price Administration required the owners to reduce the rentals in the property to the bankruptcy rates prevailing before the improvements and increased services, resulting in an operating loss of $80.22 for the year of 1942, according to OPA accountants. The Office of Price Administration sought to require the owner to take a loss of $2,382.75 for the year 1942 by requiring refunds to tenants, but although numerous letters were sent the tenants by OPA none of them saw fit to require such refunds. Losses for the year 1943 amounted to $2037.06, in addition to which the owners are required to provide their own services without compensation in the administration and operation thereof. These figures do not include the losses of petitioner herein who supplies the furnishings.

"Mr. Cox. Wait a minute. To be brutally frank, I don't see any reason why I should be interested in the case. It's a matter that's in the hands of the attorneys and not in my hands.

Mr. Taylor. I'm not asking you to settle the case.

Mr. Cox. Let me finish. And if I had the property and I couldn't find out what I was going to do with it because I couldn't operate it as an apartment house, I'd just step aside very graciously and leave the bank take it, because properly they can obtain those deficiency judgments from you.

Mr. Taylor. I didn't ask you to state that on a financial basis, because you have no knowledge as to how long or whether I can hold it vacant for ten years.

Mr. Cox. I'm just saying what I would do.

Mr. Taylor. If you were in financial embarrassment as well.

Mr. Cox. If I were placed in a position where I couldn't operate it for the purpose for which I originally purchased the property, and I thought there was no other alternative, then I would neatly step aside and leave the bank take it, or whoever had the loan.

Mr. Taylor. And let them take a fifty-thousand-dollar equity?

Mr. Cox. I didn't know you have a fifty-thousand-dollar equity in it.

Mr. Taylor. It might make some difference?

Mr. Cox. I thought your question was if you were in a jam and operating an apartment house or store building or theatre or office building and couldn't carry on operations successfully and

were losing money every month. If you are losing money every month what do you do? You take the cheapest way out of your problem, don't you?

Mr. Taylor. Assuming that the losses are only temporary, you attempt to ride out the storm, don't you?

Mr. Cox. In a case of this kind can you object to the questioning, because I don't see why"——

That was the close of his testimony.

(Pages 45-46 of record of Pet. 8-S.F. 30482.)

DOCKET 8—S.F. 30,355; 20,872; 9574.

Excerpts from Official O. P. A. correspondence showing how a landlord is required and forced under threat of criminal prosecution to provide an extra room, refrigerator, and furniture, and take care of three extra occupants for 9 months without any compensation whatsoever. This case by incorporation into the record of Protest 15 Region VIII was made a part of the record of Petition 8-S.F. 30482 (Petition of Evelyn Flynn) by order of respondent June 16, 1943.

At the request of a prospective tenant the landlord provided an extra room, refrigerator and furniture for the use of three extra occupants and immediately filed his petition (No. 9574) for approval of the additional $20.00 per month which the tenant agreed to pay. Six months later O.P.A. wrote the landlord as follows:

"March 24, 1943
In reply refer to:
8RA(WRW)SF(L)
21,235—9574

* * * * * * *

"Dear Sir:

* * * * * * *

"Your petition No. 9574 was dismissed for the reason that the petition itself merely states 'the amount of money expended for such improvements and furnishings is $1005. which I, the owner have paid' * * *.

* * * * * * *

"As advised you yesterday, the only way that you can increase the legal rental on 5914 California Street from $45.00 to some higher figure is by filing a petition specifying in detail the additional furnishings which you claim to have added and in that event the increase will not be effective until an order is issued covering your petition.

* * * * * * *

"* * * Undoubtedly, if an additional room was furnished in September as compared to March 1st 1942, you of course are entitled to additional rent but such additional rent can only be legally collected when you receive an order from this office issued in response to a petition filed that is made out with the necessary information thereon."

* * * * * * *

(Signed:) Wm. R. Weill
Chief Investigator"

Following this, the landlord received a form letter signed by the O.P.A. Rent Attorney requiring him to

refund to his tenant the rent, if any, collected by the landlord for the additional room and furnishings before an order granting the increase would be made.* A copy of this form letter was sent to the tenant.

The landlord promptly replied to this letter as follows:

"5916 A California Street,
San Francisco, Calif. Apr. 6, 1943

San Francisco Bay Defense-Rental Area,
1355 Market Street
San Francisco, Calif.

Re: #30,355
Attn. Mr. Fred D. Callaway

Dear Sirs:

Your form letter received. To the best of my knowledge the owner is in full compliance with the regulations. It is possible the petition or procedure advised by your office is not the exact one to be followed.

In our opinion this unit as now rented is entirely different than the one rented on March 1st, 1942 and therefore constitutes a new offering. To require the owner to refund any money pending an order of the Director reducing the rent would

*On the maximum rent date, two persons occupied three furnished rooms at a rental of $45.00 per month. When this dwelling unit became vacant, the owner refinished the front of the building which contained two dwelling units, redecorated the dwelling unit involved, and at the request of the prospective tenant, supplied an additional bedroom with furniture, and a refrigerator. The total cost of the furniture and improvements was approximately $1000.00. The family of the new tenant comprised five persons. The owner purchased this new furniture on installment payments of $25.00 per month. The tenant signed a written lease calling for total rental of $65.00 per month, with full knowledge of all the foregoing facts.

be a taking of the additional room, furnishings and services without any compensation.

We realize that you do not desire this to happen, and call attention to the fact that a petition was filed with you in accordance with instructions given at your office when this new offering was made and accepted by the tenant. We have made every effort within our knowledge and information to comply with the regulations by filing the original petition as instructed and by filing the new one now before you.

Of course we have not refunded any rent paid. To the best of our knowledge there has not been any order of the director reducing the rent.

Very sincerely yours,

(Signed) Wm. E. Valencia"

The tenant however refused to pay any further rent whatsoever until the rental previously paid for the extra room and furniture (which was $20.00 per month for seven months past) had been fully off-set against accruing rent pursuant to the O.P.A. Rent Attorney's form letter. After considerable discussion, when the current rent was about a month in arrears, the landlord, in accordance with the state law, duly gave to the tenant a written three-day notice either to pay his rent or to surrender the premises. The landlord served a copy of this notice on the rent director the same day in accordance with the provisions of Maximum Rent Regulation 28.

Thereupon the O.P.A. Rent Attorney wrote to the landlord as follows (It is interesting to contrast the tenor of this Rent Attorney's letter with that of the letter of the landlord herein above incorporated):

"April 15, 1943
In Reply Refer to:
8RA-SF: FDC (L)
Docket 30,355
#21,235

* * * * * * *

"Dear Sir and Madam:

* * * * * * *

"We now find that you are attempting an illegal eviction against your tenant, a service man. Are you not aware that the State Bar, and the Lawyers' Guild, as a part of their patriotic duty, are defending service men in such circumstances? Also, that they will assist such service man in the filing of an action against you for treble damages? This also has been explained to you.

"Your maximum legal rent, as registered by you in this office, is $45 per month. Any charge over that amount since July 1, 1942, is an illegal rent, which must be refunded to the tenant, either in cash, or where the tenant remains in occupancy, by a credit against his next rent, or both. The tenant may choose to sue you for three times the amount of overcharge paid since August 1, 1942, or for $50 for each such charge, whichever amount is larger. Attorney's fees and costs of court may also be awarded to him.

"Your petition to adjust the rent on these premises, on the grounds that you have installed *additional* furniture, cannot be acted on until you are in 'full compliance'. This you will not be until you have every registration correct, your illegal attempt to evict withdrawn, and your rent back to the maximum legal—for every unit of your property.

"An inspection has been made of your property, we are ready to issue the order increasing the rent, on the basis of your petition, but this we cannot do until you come into full compliance.

"Moreover, may I remind you, Mr. Valencia, whether acting as co-owner, as husband of the owner, or as agent of the owner, that you have a criminal as well as a civil responsibility in this matter, and if civil sanctions fail to bring you into compliance, it will be necessary to resort to the criminal action.

(Signed:) Fred D. Callaway
Rent Enforcement Attorney."

Pursuant to the foregoing letter the Office of Price Administration refused to issue an order adjusting the rent until after the tenant served notice that he was vacating at the end of 9 months occupancy during which time he had enjoyed the extra room, refrigerator and furniture for the use of three extra occupants without any compensation to the owner. The order then issued by the Office of Price Administration was not to be effective for the period of past occupancy but to cover only a future tenant.

The landlord then assigned his claim for $180.00 to Rauer's Collection Co. Inc. who filed suit to recover, whereupon the Office of Price Administration threatened the agency (principal and attorney) with criminal prosecution unless the suit was dismissed. The following is from a letter written by O.P.A. confirming this fact. See also letter of the Collection Co. set forth thereafter.

San Francisco Bay Defense Rental Area
Office of Price Administration
1355 Market Street
San Francisco, California

June 22, 1943 8RA-SF: FDC (L)

Rauer's Collection Company, Inc., 20,872
703 Market Street, 30,355
San Francisco, California. 9,574

Re: Guadalupe Gueterez and William E. Valencia, owners;
Lt. Com. Robert E. Ramey, USNR, tenant,
5914 California Street, San Francisco, premises.

Dear Sirs:

Pursuant to the telephone conversation today between David Freidenrich, of our legal staff, and Jerome L. Schiller, your attorney, concerning the action filed by Mr. Schiller, on your behalf, as assignee of a claim for rent made by the above named Guadalupe Gueterez and William E. Valencia, against Lt. Com. Robert E. Ramey, USNR, and his wife, tenants at 5914 California Street, owned by the said Gueterez and Valencia, I am writing to confirm the statements made by Mr. Freidenrich.

Mr. Freidenrich advised your attorney that the claim for rent at the rate of $65 per month for these premises is a claim for an illegal rent. The maximum legal rent of these premises was $45.00 per month from July 1, 1942 until the next rent date after June 17, 1943. * * *

This claim which you have filed, as assignee and agent for Guadalupe Gueterez and William

E. Valencia, against Robert E. Ramey and his wife is, therefore, a demand for an illegal rent, and we must inform you that you will be in violation of the Rent Regulations along with your principals and assignors, if you proceed with such claim.

We therefore request that you dismiss this claim and so inform us, immediately. If this is not done we will have to take whatever action is essential to secure compliance with the law.

A copy of this letter is being sent to your attorney, your assignors and principals, and to the tenants.

Very truly yours,
David C. Dunlap,
Chief Enforcement
Attorney."

The following is relevant portion of letter from the Collection Co. confirming the above:

"Rauer's Collection Co. Inc.
San Francisco

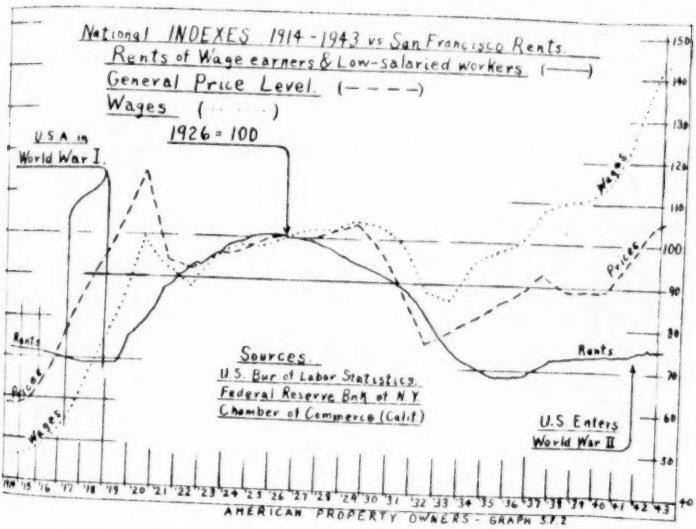
June 23, 1943

Mr. William E. Valencia,
5916-A California St.
San Francisco, Calif.

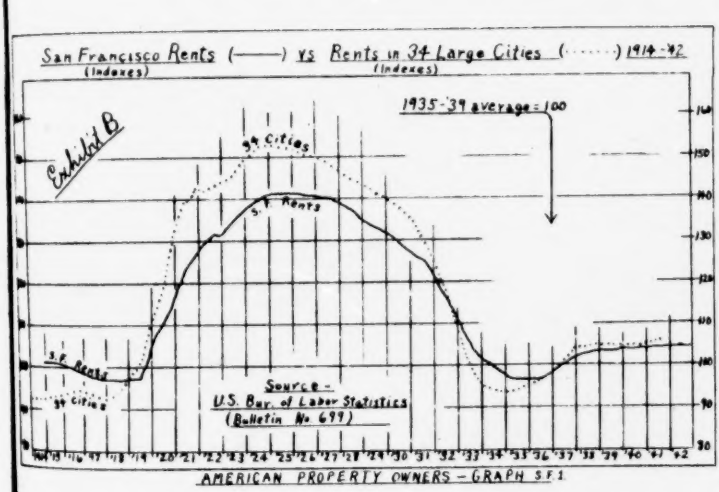
Dear Sir:

Regarding the claim which you referred to us against Mrs. R. E. Ramey, * * * the O.P.A. has threatened arrest and prosecution unless we dismiss this action. * * * we cannot afford to handle this matter for you * * *.

Rauer's Collection Co. Inc.,
By R. E. Clark (President)."



AMERICAN PROPERTY OWNERS - GRAPH 57.2



AMERICAN PROPERTY OWNERS - GRAPH S.F. 1